

IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE  
WESTERN DIVISION

FILED

STACIE SPENCER, Individually and as  
Parent and Next Friend of a minor child,  
JOHN DOE,

NOV 19 2009  
Tennessee Claims Commission  
CLERK'S OFFICE

Claimants,

v.

CLAIM NO. 20-090-886  
Regular Docket

STATE OF TENNESSEE,

Defendant.

COMPUTED ☒  
DOCKETED ☐  
C/S-COMM ☐  
DCA ☐  
AG ☐  
ALJ ☐  
FEE PAID ☐  
NOTICE SENT ☐  
FILED ☒

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

This claim comes before the Claims Commission on the motion of the Defendant to dismiss pursuant to Tenn. R. Civ. P. 12.02(1) and (6) for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted, Claimant's response thereto, *Defendant's Reply to Claimants' Response to Defendant's Motion to Dismiss*, and, indeed, the record as a whole.

Claimant Stacie Spencer enrolled her minor child, John Doe, in before/after school services at Merryland Childcare and Development Center, hereinafter referred to as Merryland. Spencer alleges her

son was sexually abused at Merryland from sometime in mid 2002 until May, 2003. Claimant further alleges that the perpetrator was charged with abusing a child at another childcare center in 2000, abuse which was reported to the Tennessee Department of Human Services, hereinafter referred to as DHS.

Claimant alleges that although the State's subsequent investigation of the earlier abuse found that the alleged offender was a "validated perpetrator of child abuse," DHS and/or the Tennessee Department of Children's Services, hereinafter referred to as DCS, failed to notify the appropriate agencies, departments and businesses, including Merryland, about its investigation of the offender and failed to follow appropriate policies and procedures.

The State argues that this claim should be dismissed because the gravamen of the complaint is that state employees carried out the State's regulation and licensing of daycare facilities in a negligent manner. The State notes that, Tenn. Code Ann. § 9-8-307(a)(2) provides that the Tennessee Claims Commission has no jurisdiction over claims based on "the acts or omissions of persons, partnerships, corporations or other entities licensed or regulated by agencies of the

state, notwithstanding any negligence committed by the state in the course of performing licensing or regulatory activities.”

The Claimant argues that liability against the State is not based on the actions of private individuals or entities licensed by the State but on the State’s own negligent conduct. Claimant notes that under Tenn. Code Ann. § 37-5-512 (a)(3)(B), when DCS receives a report of abuse or neglect of a child, “it shall immediately notify the appropriate department of its investigation.” Claimant contends that if DCS had notified the appropriate parties of the results of their investigation of Ivan Ward, John Doe would not have been harmed.

Tenn. Code Ann. § 37-5-512 (a)(3)(A) makes it clear that information gleaned in such investigations shall be used

in the determination of whether appropriate care is being provided to children who may be in the care of any child care agency or child care program that the departments of children’s services, education or human services license, approve or certify.

It seems clear that the gravamen of this claim is that the State was negligent in its licensing or regulation of childcare facilities. Thus, even if the allegations are true, the Commission **FINDS** it has no jurisdiction over them.

**IT IS THEREFORE ORDERED** that this claim is **DISMISSED** with prejudice. The Claimant will have to look for a remedy in the Circuit Court of Tennessee.

  

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**NANCY C. MILLER-HERRON**  
**COMMISSIONER**

**CERTIFICATE OF SERVICE**

I certify that a true and exact copy of the foregoing Order has been mailed  
to:

Mr. James R. Nowlin, Esq.  
Mr. Craig V. Morris, Esq.  
45 North Third St., 2<sup>nd</sup> Floor  
Memphis, TN 38103

Ms. Martha Campbell, Esq.  
Associate Deputy Attorney General  
Office of the Attorney General  
P. O. Box 20207  
Nashville, Tennessee 37202

This the 19 day of November, 2009.



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**MARSHA RICHESON, CLERK**  
Tennessee Claims Commission